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10 UNITED STATES BANKRUPTCY COURT  
11 SOUTHERN DISTRICT OF CALIFORNIA

12  
13 In re:  
14 WEST COAST PROPAGATIONS, LLC  
15 Debtor.

16 Case No. 15-03611-MM11  
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**RESPONSE IN OPPOSITION TO  
DEBTOR'S MOTION TO APPROVE  
STIPULATION FOR USE OF CASH  
COLLATERAL AND ADEQUATE  
PROTECTION**

22 Date: July 29, 2015  
Time: 2:00 pm  
Ctrm: Dept. 1  
Hon. Margaret M. Mann

23 I

**BACKGROUND**

24 West Coast Propagations LLC, a California Limited Liability Company ("Debtor")  
25 filed its Chapter 11 Petition on May 29, 2015. Debtor's Schedule D (Doc 1, 11-12) lists  
26 the Internal Revenue Service ("IRS") as a secured creditor based on federal tax liens  
27 recorded in 2012, 2013, 2014, and 2015. Regent's Bank Division of Grandpoint Bank  
28 ("Bank") is listed as a secured creditor based on first and second deeds of trust recorded in

1 June of 2008 (\$413,631.00 and \$188,711.00). Two judgment lien creditors, the State  
2 Board of Equalization and the Franchise Tax Board, are also listed on the Debtor's  
3 schedules as secured creditors. The Franchise Tax Board has filed a claim but did not list  
4 any portion of the claim as secured. (Claim 2-1).

5 Debtor's amended Schedule B (Doc 38, 5-8) lists personal property with a total  
6 value of \$2,023,557.31, including cash in two accounts at Bank totaling \$9,993.06,  
7 accounts receivable in the amount of \$412,764.25, and seed flats, plants potted for sale,  
8 and stock plants valued at a total of \$1,312,050.00. The amended Schedule A shows two  
9 parcels of real property with a total value of \$1,419,000.00.

10 On June 19, 2015, the IRS filed a timely proof of claim ("POC") (Claim 1-1)  
11 showing the secured portion of its claim for unpaid employment taxes (Agri-FICA,  
12 FUTA) and other taxes incurred during 2011 through 2014 in the amount of \$547,950.94.  
13 An amended POC was filed on July 6, 2015 (Claim 1-2) to change the amounts of the  
14 priority and unsecured general portions of the claim, but the amount of the secured portion  
15 was not changed. Notices of Federal Tax Lien ("NFTL") for the tax debts listed as  
16 secured (\$547,950.94) were filed with the California Secretary of State and the San Diego  
17 County Recorder's office on various dates in 2013 – 2015 as noted on the two-page Form  
18 10 attached to the IRS's Amended POC [Claim 1-2].

## 19 PROCEDURAL STATUS

20 On June 19, 2015, Debtor filed a motion for court approval of a stipulation for its  
21 use of cash collateral to pay its operating expenses. Debtor has entered into various  
22 financial agreements which are detailed in its motion and the stipulation and apparently  
23 form the basis for its position that the Bank "holds a first position security interest on  
24 Debtor's personal property . . .". [Motion, p. 3] Debtor has secured the Bank's  
25 agreement, evidenced by the stipulation, to allow Debtor to use cash collateral to pay  
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1 certain expenses detailed in the stipulation. Having received notice of the motion, the IRS  
 2 hereby registers its opposition.<sup>1</sup>

3 **ARGUMENT**

4 A federal tax lien attaches to *all* of a tax debtor's "property and rights to property,  
 5 *whether real or personal*," upon the assessment of the tax and remains in effect until the  
 6 liability is satisfied. 26 U.S.C. §6321-22. "The statutory language 'all property and rights  
 7 to property' . . . is broad and reveals on its face that Congress meant to reach every  
 8 interest in property that a taxpayer might have." *United Sates v. National Bank of*  
 9 *Commerce*, 472 U.S. 713, 719-20 (1985); *United States v. Donahue Industries, Inc.*, 905  
 10 F.2d 1325, 1330 (9th Cir.1990). "When Congress so broadly uses the term 'property,' we  
 11 recognize, as we did in the context of the gift tax, that the Legislature aims to reach  
 12 "'every species of right or interest protected by law and having an exchangeable value.'" "  
 13 *Drye v. United States*, 528 U.S. 49, 56 (1999), quoting *Jewett v. Commissioner*, 455 U.S.  
 14 305, 309 (1982). "Stronger language could hardly have been selected to reveal a purpose  
 15 to assure the collection of taxes." *Glass City Bank v. United States*, 326 U.S. 265, 267  
 16 (1945). In other words, "all" means *all*, and includes accounts receivable due a debtor. *In*  
 17 *re Wind Machine Sales and Service, Inc.*, 161 B.R. 1000, 1010 (Bankr. E.D. Ca.  
 18 1993)(Debtor's accounts receivable, inventory, equipment and cash are included within  
 19 "rights to property"). Therefore, although there may be issues regarding seniority/priority,  
 20 it is clear that the federal tax liens referenced in the IRS's original and amended POCs  
 21 attached to all of the assets listed in Debtor's schedules. And the IRS is entitled to  
 22 protection if any of those assets are to be used by Debtor to operate its business.

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24<sup>1</sup> The present motion may be the wrong vehicle for obtaining the Court's approval of  
 25 Debtor's use of cash collateral. A motion for authority to use cash collateral is  
 26 provided for in Fed. R. Bankr. P. 4001(b), which provides that such motions must be  
 27 made in accordance with the procedure dictated by Fed. R. Bankr. P. 9014 as  
 28 contested matters. Because the IRS has not given its consent (nor was its consent  
 requested), a motion for approval of a stipulation is inappropriate.

The Bankruptcy Code, 11 U.S.C. §363(c)(2) prohibits the use of cash collateral and cash equivalents without the consent of all secured creditors or a court order. “Cash collateral” includes “cash, negotiable instruments, documents of title, securities, deposit accounts or other cash equivalents... and includes proceeds of property....” 11 U.S.C. §363(a). Proceeds of accounts receivable are cash collateral. *In re Reiter Corporation*, 449 B.R. 641 (Bankr. D. P.R. 2011). As shown by its POC, the IRS is a secured creditor to the extent of the tax debts for which NFTLs were filed. A secured creditor is entitled to “adequate protection” of its interest in property of the estate before it may be used, sold, or leased. 11 U.S.C. §363(e). “Adequate protection” may be furnished by periodic payments or a replacement lien. 11 U.S.C. §361(2).

In this case, Debtor was well aware of the IRS's tax liens before it filed for bankruptcy protection. NFTLs covering a large number of tax debts were filed on seven occasions in 2013, 2014, and 2015 before the Petition Date in this case. [Claim 1-2, Form 10]. Further, Debtor listed six of the liens on its Schedule D. Subject to specific enumerated exceptions, the IRS's filing of these NFTLs protects its interest in Debtor's property against purchasers, holders of security interests, and other competing claimants. 26 U.S.C. §6323(a).

Debtor and the Bank have entered into an agreement whereby Debtor would use cash and cash collateral to operate its business and the Bank's claims would be protected. Because the interests of the IRS are not considered in this arrangement, and the parties neither requested nor obtained the IRS's consent, it cannot be allowed. 11 U.S.C. §363(c)(2).

## CONCLUSION

The IRS is a secured creditor in this bankruptcy. Its secured claims total \$547,950.94 as shown by its amended POC. Although the stipulation appears to provide protection to the Bank for its secured interests, there is absolutely no provision for protection of the IRS's as required by 11 U.S.C. §363(e). Consequently, it would be

1 inappropriate to approve the private agreement between Debtor and the Bank in the  
2 absence of adequate protection for the IRS's claims and the motion should be denied.

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4 DATED: July 15, 2015

LAURA E. DUFFY  
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5  
6 /s/ Tom Stahl  
7 TOM STAHL  
8 Assistant U.S. Attorney  
9 Chief, Civil Division  
10 Attorneys for the United States

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